

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE M.F. SALDANHA

W.P. No. 9650/1996

BETWEEN

A. Siddaramappa
s/of.Sri K. Govindappa
adult, C/of.Siddaramappa
brothers, Bangalore Road,
BELLARY

PETITIONER

(Sri B.L. Acharya for petr.)

AND

1. The Deputy Commissioner
Bellary Dist., Bellary
2. The State of Karnataka
rep. by the Secretary
to Government,
Revenue Department,
Dr.Ambedkar Veedhi
Bangalore -560 001.

RESPONDENTS

(Smt.M.R. Shanthakumari, HCBP for respts.)

Memorandum of writ petition is filed under Arts.226 & 227 of the Constitution praying that this Court be pleased to quash vide Annex.A dt, 22.3.96 by R-1 etc.

Writ petition coming on for prly. hearing this day, the Court made the following:-

ORDER

ORDER

I have heard the petitioner's learned advocate and the learned Govt. Advocate. Of the two points raised before me ~~that~~ the first one is that the purchase was in an individual capacity and not in a representative capacity on behalf of the Firm. From the material before me, it does appear that the petitioner's learned advocate has made out an arguable case because his principal contention is that there is no material on record to justify the conclusion that the purchase was on behalf of the Firm when the sale deed itself shows that the petitioner transacted in his individual capacity. As regards the question of income, learned advocate submitted that the error committed by the Deputy Commissioner is that having called for the figures from the Income Tax Department, that he has taken the aggregate income of the family and not of the petitioner. Learned advocate has demonstrated to me that the assessments have been split up and filed under different heads and that the only material one was with regard to the petitioner's individual return.

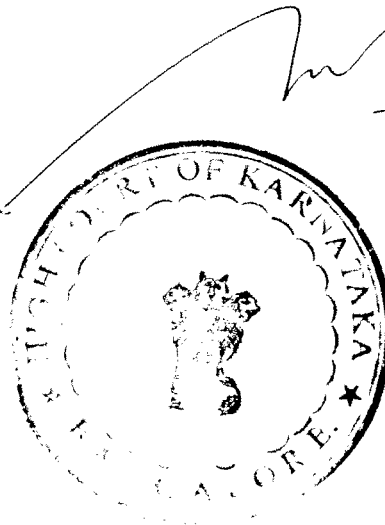


Unfortunately, none of this was pointed out to the authority as the petitioner was unrepresented when the case was heard. Normally, I would not have granted the petitioner any further opportunity nor would I have remanded the case but having scrutinised the record I do feel that if such a course is followed, gross injustice would result to the petitioner. At the same time, the fact remains that due to ^{the} petitioner's default the case will have to be heard denovo and under these circumstances, though I have upheld the request of the petitioner's learned advocate that he be given an opportunity to file his reply to the show cause notice and produce whatever records he wants in support thereof, the petitioner will at the same time have to atone for the lapse and the consequences for the waste of judicial time. To my mind, this can be done by imposition of relatively heavy costs against the petitioner. This is also necessary because in case after case I have found that parties and their representatives indiscriminately remain absent and years later the entire proceedings will have to be restarted. The costs are quantified at Rs.2000/-. This again is only in response to the strong

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request that the petitioner's learned advocate has conveyed as otherwise this is a case which would have qualified for much heavier costs.

2. The impugned order is set aside. The petitioner is directed to appear before the authority on 27.7.1998 at 11 A.M. when the authority will fix the further date of hearing. In the meanwhile, it is directed that the petitioner will have to deposit the costs awarded with the Advocates' Welfare Fund, High Court and produce a receipt of the said deposit before the authority prior to the commencement of the hearing of the case. The petition accordingly succeeds to this extent and stands disposed of with costs as quantified.



Sd/-
JUDGE

GS/-